

2012 WL 8678231 (Md.App.) (Appellate Brief)
Maryland Court of Special Appeals.

Michelle Lynn HUNDLEY, Appellant,
v.
STATE OF MARYLAND, Appellee.

No. 2223.
September Term, 2011.
December 14, 2012.

Appeal from the Circuit Court for Wicomico County
(The Honorable Judge David Mitchell Presiding)

Appellant's Brief and Appendix

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***1 STATEMENT OF THE CASE**

On October 4, 2011 appellant, Michelle Lynn Hundley, was tried without a jury in the Circuit Court for Wicomico County, the Honorable David B. Mitchell presiding, and convicted of abuse or **neglect** of a vulnerable adult in the first degree. On December 2, 2011, Ms. Hundley was sentenced to a term of five years incarceration, with all but eighteen months of that term suspended in lieu of probation, and she noted this timely appeal on December 6, 2011.

***2 QUESTION PRESENTED**

Is the evidence sufficient to establish that Ms. Hundley is guilty of **neglect** of a vulnerable adult in the first degree?

STATEMENT OF FACTS

On January 22, 2010, paramedic Stephanie Rathel responded to 417 W. Main Street in Fruitland, Maryland. (T1. ¹ 35) Upon arrival, Ms. Rathel discovered an **elderly** woman, identified as Mary Jane Baker, in a hospital bed. (T1. 36) Ms. Baker had **bed sores** and boils on her backside and hip (T. 42) and the bedsheets were saturated in dried blood and urine. (T1. 36) Ms. Baker was taken to the emergency room of the Peninsula Regional Medical Center where nurse examiner Trina Forney met with Ms. Baker. (T1.18) When Ms. Forney encountered Ms. Baker, the latter was in the fetal position, non-verbal, and non responsive. (T1. 198) Ms. Forney also noted the presence of pressure sores and ulcers.

Kathy Klutzberg, a social worker, met with Ms. Baker's husband, co-defendant George Baker, who reported that his wife had been bed-ridden for years (T1. 58) and had lived at home for three years, after she was sent home from a nursing facility and told she did not have long to live. (T1. 87) Mr. Baker also reported the situation "turned bad about three weeks ago." (T1. 64) and Ms. Baker scratched herself and opened up some sores on her body. (T1. 58) Mr. Baker also noted that his wife had not eaten solid food for about six months and, for nutrition, was fed Carnation Instant Breakfast shakes via a baby ***3** bottle. (T1. 63) Later, Mr. Baker informed Ms. Klutzberg that his wife had not been "in good shape" and had "been going downhill, and she had not bounced back." (T1. 79)

A few hours later, Ms. Kutzberg responded to the Baker home and found a hospital bed with a pad which had blood stains upon it. (T1. 68, 85) Ms. Klutzberg also found a plastic hospital bathing bin which, she averred, was not clean. (T1. 75-65) Officer Brian Beaver of the Fruitland City Police Department also participated (with Mr. Baker's permission) in the search of his home. (T1.95) At the home, Ms. Hundley advised Officer Beaver that she lived at the home, and helped cook and clean the home. (T1. 97) Ms. Hundley stated that she fed Ms. Baker - her grandmother (T1. 131) -Carnation Instant Breakfast in a baby bottle, and stored the leftover portion in the refrigerator. (T1. 98) Ms. Hundley also informed Officer Beaver that Ms. Baker would be cleaned every time she soiled herself. (T1. 99) When Officer Beaver entered the home, Ms. Baker's bed was soiled and smelled of urine. (T1. 100)

Ms. Hundley and Mr. Baker each testified on their own behalf. Ms. Hundley testified that she lived with her grandparents almost her entire life, and her grandmother had been sick for almost a decade. (T1. 132) Mrs. Baker had been bedridden for almost two years, could not get out of bed without assistance and, although she ate almost continuously, she had stopped eating as much in the time leading up to her hospitalization because her stomach bothered her. (T1. 133-35) In that time period, Ms. Hundley fed her grandmother Carnation Instant Breakfast three times a day, and any time her grandmother asked her to eat. (T1. 138) Ms. Hundley bathed her grandmother regularly (T1. 136) and cleaned the bed each time Mrs. Baker soiled herself. (T1. 139)

***4** On the day in question, Ms. Hundley called paramedics to the home at her grandfather's request because her grandmother had scratched one of her sores open. (T1. 141) The pad on Mrs. Baker's bed - which other witnesses reported had dried blood

upon it -was from the open sore discovered that day. (T1. 141) Mrs. Baker had had sores for about three weeks (T1. 152) and, per her doctor's advice, Ms. Hundley treated the **bed sores** with a cream. (T1. 146) Mrs. Baker had never previously had **bed sores**. (T1. 167)

Ms. Hundley stated that her grandmother had always been frail and, at 4'9" tall, was a slight woman. (T1. 135) Mrs. Baker's legs were in a locked condition for two years prior to when she went to the hospital, due to a fall. (T1. 170) Additionally, Mrs. Baker had never walked completely upright during Ms. Hundley's lifetime, as Mrs. Baker had been in an automobile accident many years earlier. (T1. 147)

George Baker testified that he had been married to his wife, Mary Jane, since 1947. (T2. 4) Mr. Baker slept at the foot of his wife's hospital bed, so he could get his wife a drink of water, or change her bed pad if necessary, overnight. (T2. 6-7) When Mrs. Baker was last seen by a physician, about a year before the incident at issue (T2. 5), Mrs. Baker's weight had dropped to about fifty pounds. (T2. 6) Mrs. Baker had twice decided to stop eating (T2. 7) and Mr. Baker fed his wife nutritional formula, with Mrs. Baker's physician's permission, for sustenance. (T2. 8-9) Mrs. Baker had also unilaterally stopped eating when she was previously in the hospital. (T2. 9)

Mrs. Baker had been communicative until about three weeks before the incident in question. (T2. 10) In those three weeks, Mrs. Baker stopped talking and appeared fragile. (T2. 10) Mrs. Baker had also, from time-to-time, experienced **bed sores**, which would go *5 away after a few days if ointment cream was applied to the sores. (T2. 10) However, the sores stopped healing in the three or four weeks before Mrs. Baker was hospitalized, and one on her hip had been present for about three months. (T2. 11-12) Mrs. Baker had scratched at her sores for the past few days and they were not healing. (T2. 11, 20) On January 22, 2010, Mrs. Baker's family noticed blood on her bed pad and called 911. (T2.15) This was the first time there had ever been blood on the pad. (T2. 16)

On this evidence, Mr. Baker and Ms. Hundley each argued they were not guilty of **neglect** of a vulnerable adult (Mrs. Baker) in the first degree, and each adopted the other's arguments to that effect. (T1. 112) Ms. Hundley argued, in support of her mid-trial Motion for Judgment of Acquittal, that "there is no testimony even in the light most favorable to the State that any injuries that would occur would fall under the definition of serious physical injury," observing that, although the State introduced pictures of Mrs. Baker's injuries, "there is no medical testimony of the extent of those injuries. There is no medical testimony as to whether those injuries are permanent or disfiguring, and there is no medical as to sort of the nature of those injuries." (T1. 113) Ms. Hundley also noted, with regard to some of Mrs. Baker's maladies, "[t]here is no testimony before the Court when these injuries were present. They could have been long-standing injuries. There is no testimony before the Court as to the cause of those injuries." (T1. 114) Ms. Hundley also observed that there was no evidence establishing a causal connection between her actions and Mrs. Baker's condition. (T1.115)

At the close of evidence, relying on Mrs. Baker's medical records, the State noted that she was "noted to be severely malnourished and cachectic ... her appetite was good. *6 She was dehydrated which was corrected with IV fluids." (T2. 22) Additionally, she had "two multiple decubiti" which were "improving with local treatment," "dehydration, which was resolved" and "cachexia, which seems to be improved with better nutritional status." (T2. 22) The State also noted "the feeding improved in a very short order[.]" (T2. 25) In response, Ms. Hundley noted "[t]here is nothing in this record" showing that she "intentionally meant to hurt her grandmother[.]" (T2. 28) Ms. Hundley noted she fed Mrs. Baker, and "the medical records have times where she's in the hospital not eating, appetite poor, not eating." (T2. 29) Ms. Hundley also observed that the medical records showed that it was she who fed her grandmother when she was in the hospital. (T2. 31) Concerning Mrs. Baker's physical condition, i.e., "her being in the fetal position," Ms. Hundley noted "[t]here is no evidence before this Court that it is even remotely related to anything" that she did. (T2. 31) In conclusion, Ms. Hundley submitted that there was no evidence of a permanent, protracted injury, nor of any injury which created a substantial risk of death. (T2. 32)

The Court, however, found Ms. Hundley and Mr. Baker guilty of **neglect** of a vulnerable adult in the first degree determining, in pertinent part:

Mrs. Baker was a difficult patient to manage. Only a few years before the authorities became involved in January 2010 Mrs. Baker was released from care in a medical institution and as the parties indicated to the court, her life expectancy was very short. That placed her in the category of being a patient or an individual who needed attention and care.

It is the opinion of the court that Mr. Baker and Ms. Hundley did intentionally **neglect** to provide care for Mrs. Baker and that their criminal behavior resulted in serious and significant bodily harm to Mrs. Baker.

*7 Mrs. Baker was vulnerable and frail. She needed the highest levels of care possible in order to sustain her life. She did not receive it. The consequence was, as was testified before the Court today, that her body began to break down. Her systems began to fail. It's not just that she suffered from **bedsores** or obviously **wounds** and injuries, but her systems of support within her body, her functions within her body disintegrated. She became malnourished. And we find it significant that with the minimal level of care, that is through the provision of basic nutrients, she began her recovery. It's not only that she gained weight but she began to intake sustenance.

It is the conclusion of the Court and finding of the Court that Mr. Baker and Ms. Hundley intentionally failed to provide essential medical care during the later part of the life of Mrs. Baker in their care. We have no information to support a finding that she went to the hospital, but they knew the need and availability of medical care whether in the form of the hospital or other community based services. They did not avail themselves of those services.

While it is true that the medical staff came into the home perhaps at the instance of Mr. Baker and Ms. Hundley, it is the conclusion of the Court that the situation with regard to Mrs. Baker had gotten so far out of hand and had gotten beyond their ability to hide it, control it, or to keep in out of the gaze of professionals, that they had no recourse but to engage the EMS staff, which in turn engaged the hospital.

Perhaps Mr. Baker and Ms. Hundley were well meaning when they took on the responsibility of providing care for Mrs. Baker. We do not dispute that they loved her. They did, however, take on a task to care for her and the **neglected** intentionally ... [i]ntentionally **neglected** to continue to provide a level of care necessary to sustain a moderate quality of life for Mrs. Baker. Therefore, we direct the Clerk of the Court to enter findings of guilt as to count one for Mr. Baker and for Ms. Hundley.

(T2. 39-41; App. 2-4) Mrs. Baker was subsequently sentenced to a term of five years incarceration, with all but eighteen months of that term suspended in favor of probation, and she noted this timely appeal.

***8 ARGUMENT**

The lower court erred in finding Ms. Hundley guilty of abuse or **neglect** of a vulnerable adult in the first degree. To prove that offense, the State bears the burden to show that the accused **neglected** a vulnerable adult, and that the **neglect** resulted in "serious physical injury." Md. Code Ann., Crim. Pro § 3-604. The State failed to establish prove that Ms. Hundley failed to provide Ms. Baker "necessary assistance and resources for [her] physical needs," § 3-604 (a)(7)(i) and, assuming it did, that that **neglect** resulted in a substantial risk of death, disfigurement, loss of function, or impairment of a bodily member or organ. § 3-604 (a)(8). Thus, the evidence is not sufficient to support the guilty verdict and, accordingly, that verdict must be vacated.

A. Standard of Review

It is well established that "[d]ue process requires the State to establish every fact necessary to constitute the crime with which the defendant is charged, including his criminal agency, beyond a reasonable doubt." [Robertson v. State](#), 112 Md. App. 366, 375, 685 A.2d 805 (1996); [In re Winship](#), 397 U.S. 358, 364 (1970). The reasonable doubt standard is high and exacting, requiring that evidence be adduced to allow the fact finder "to reach a subjective state of near certitude of the guilt of the accused."

Jackson v. Virginia, 443 U.S. 307, 315 (1979). In assessing whether the State has met this burden, the test is “whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Albrecht*, 336 Md. 475, 479, 649 A.2d 336 (1993) (quoting *Jackson*, 443 U.S. at 318-19). Yet, the Court of Appeals has observed:

*9 These principles are simpler in formulation than they are in application. When reviewing findings made by a trier of fact, there is a fine line between the improbable yet permissible inference and the legally unsupportable speculation. This distinction is all the more difficult in criminal cases, where the requirement that guilt be proved beyond a reasonable doubt is somewhat at odds with the deference owed to a fact-finder's determinations.

Bible v. State, 411 Md. 138, 156, 982 A.2d 348 (2009),

Therefore, the State must meet “its burden to establish appellant's guilt beyond a reasonable doubt [by] producing evidence from which the [fact-finder] was not required to speculate or engage in mere conjecture,” *Morgan v. State*, 134 Md. App. 113, 139, 759 A.2d 306 (2000), and “[i]f upon all of the evidence the defendant's guilt is left to conjecture or surmise, and has no solid factual foundation, there can be no conviction.” *Taylor v. State*, 346 Md. 452, 458, 697 A.2d 462 (1997). Where, as here, the defendant has been tried without a jury, this Court will review the decision of the lower court on both the law and the evidence. Md. Rule 8-131 (c) (2012).

B. The evidence is insufficient to establish that Ms. Hundley is guilty of abuse or neglect of a vulnerable adult in the first degree because the State failed to prove that Ms. Hundley either “neglected” Ms. Baker, or that the neglect resulted in “serious physical injury.”

The evidence is insufficient to establish that Ms. Hundley is guilty of abuse or neglect of a vulnerable adult in the first degree. To be guilty of that offense, “[a] household member or family member” must “cause abuse or neglect of a vulnerable adult that: (i) results in the death of the vulnerable adult; (ii) causes serious physical injury to the vulnerable adult; or (iii) involves sexual abuse of the vulnerable adult.” *10 Md. Code Ann., Crim. Law § 3-604 (b)(2).² The State offered no proof that Ms. Hundley's conduct resulted in Mrs. Baker's death,³ and there is utterly no allegation of sexual misconduct; accordingly, trial focused only on the modality of the crime in § 3-604 (b)(2)(ii), viz., that Ms. Hundley neglected Mrs. Baker, causing “serious physical injury.” “Neglect” is “the intentional failure to provide necessary assistance and resources for the physical needs of a vulnerable adult,” § 3-604 (a)(7)(i), and “serious physical injury” is injury which “(i) creates a substantial risk of death; or (ii) causes permanent or protracted serious: 1. disfigurement; 2. loss of the function of any bodily member or organ; or 3. impairment of the function of any bodily member or organ.” The evidence was insufficient at trial to establish that Mrs. Hundley neglected Mrs. Baker, and assuming that she did, that the neglect resulted in serious physical injury, as those terms are statutorily defined.

There is no evidence that Mrs. Hundley neglected Mrs. Baker. Again, the State must show that Ms. Hundley engaged in “the intentional failure to provide necessary assistance and resources for the physical needs of a vulnerable adult.” § 3-604 (a)(7)(i). The “necessary assistance and resources for the physical needs of a vulnerable adult” includes assistance providing food, clothing, toileting, essential medical treatment, shelter, or supervision. § 3-604 (a)(7)(i). Here, there was no dispute - and no contrary evidence - that Ms. Hundley fed her grandmother nutritional formula (T1. 98, 137-38), and solid foods (T1. 135), bathed her (T1. 97, 136), and cleaned her bed and sheets when soiled. (T1. 99, 139) Ms. Hundley and the others in the home treated Mrs. Baker's sores *11 with medicinal cream (T1. 46, T2. 10), and summoned medical personnel the first time that Mrs. Baker scratched and opened those sores. (T1. 141, T2. 16)

Thus, there was significant evidence that Ms. Hundley and the other family members attending to Mrs. Baker were attending to her nutritional, hygienic, and medical needs. While Mrs. Baker was not in the best condition, the lower court recognized (as fact) that “Mrs. Baker was a difficult patient to manage.” (T2. 39; App. 2) Further, it was undisputed that Mrs. Baker had been

sent home from a hospital facility three years prior, and given only months to live, only to remain in her family's care for several additional years. (T1.87; see also T2. 39; App. 2) However, rather than focusing on the statutory requirements - viz., that the State proved that Ms. Hundley "intentional[ly] fail[ed] to provide necessary assistance and resources for the physical needs of a vulnerable adult," § 3-604 (a)(7)(i) - the Court found Ms. Hundley guilty because Mrs. Baker "needed the highest levels of care possible in order to sustain her life" and "did not receive it." (T2. 40; App. 2) The statute does not require the standard imposed by the trial judge - i.e., the "highest levels of care possible" - it merely requires the accused to provide the vulnerable adult food, clothing, toileting, essential medical treatment, shelter, or supervision. § 3-604 (a)(7)(i). The record shows that Ms. Hundley provided that necessary assistance to Mrs. Baker, and there is no evidence that she failed to do so. Thus, not only did the trial court commit legal error by holding Ms. Hundley to a standard well above the standard specified in § 3-604 (a)(7)(i), but the State failed to adduce evidence sufficient to show "**neglect**," as that term is defined. Accordingly, for either reason, the Court erred in finding that Ms. Hundley **neglected** Mrs. Baker.

*12 Assuming, *arugendo*, that the State proved that Ms. Hundley **neglected** Mrs. Baker, the State failed to show that the **neglect** "cause[d] serious physical injury to the vulnerable adult," § 3-604 (b)(2)(ii), i.e., that the **neglect** "create[d] a substantial risk of death," or "cause[d] permanent or protracted serious ... disfigurement ... loss of the function of any bodily member or organ" or "impairment of the function of any bodily member or organ." § 3-604 (8)(i)-(iii). Again, the only injuries noted by the State were that Mrs. Baker's medical records showed she was "severely malnourished and cachectic ... her appetite was good. She was dehydrated which was corrected with IV fluids." (T2. 22) Additionally, she had "two multiple decubiti" which were "improving with local treatment," "dehydration, which was resolved" and "cachexia, which seems to be improved with better nutritional status." (T2. 22) The State also noted "the feeding improved in a very short order[.]" (T2. 25) There was no expert evidence introduced at trial and, therefore, no evidence before the Court that these injuries resulted in permanent or protracted disfigurement, or the loss or impairment of a bodily member or organ. To the contrary, as the State candidly acknowledged, the dehydration "was corrected with IV fluids" and "resolved" (T2. 22), the ulcers were "improving with local treatment" (T. 22) and the feeding "improved in a very short order." (T2. 25) To be guilty of the charged offense, the **neglect** must result in *permanent* or *protracted* serious injury; these averments by the State show that Mrs. Baker's injuries were not of that grave magnitude.

Indeed, in response to Ms. Hundley's motion for judgment of acquittal, the only permanent disfigurement noted by the State was that Mrs. Baker "was permanently contracted" and her "legs are permanently locked in a 150 degree angle." (T1. 123) The

*13 State argued "that is certainly more than enough to constitute that element of the offense[.]" (T1. 123) However, the State failed to show that this physical condition was the result of any of Ms. Hundley's actions. Thus, as Ms. Hundley noted in closing argument, there was absolutely no evidence that the cause of this contraction was due to any conduct on her part. Further, Ms. Hundley testified without contradiction that, as a result of a fall, Mrs. Baker's legs were in a locked condition for two years prior to when she went to the hospital (T1. 170) and Mrs. Baker had never walked completely upright during Ms. Hundley's lifetime, as Mrs. Baker had been in an automobile accident many years earlier. (T1. 147) Accordingly, assuming that the contraction is a "serious bodily injury" - and, verily, it was the only serious bodily injury proffered by the State at trial (T1. 123) - there was no evidence that this injury was caused by Ms. Hundley's supposed **neglect**, as required by the statute. *See* § 3-604 (b)(2)(ii) (prohibiting "**neglect** of a vulnerable adult that... causes serious physical injury to the vulnerable adult") (emphasis added).

Accordingly, the State failed to prove the crime of abuse or **neglect** of a vulnerable adult in the first degree because there is insufficient evidence to show that Ms. Hundley either **neglected** her grandmother, or that the **neglect** caused serious physical injuries to Mrs. Baker, as those terms are properly defined. Therefore, the lower court erred in finding Ms. Hundley guilty of that offense, and that conviction must be vacated.

*14 CONCLUSION

For the foregoing reasons, appellant respectfully requests that this Court reverse the judgment of the court below.

Appendix not available.

Footnotes

- 1 In this Brief, “T1.” will refer to the first transcript volume of trial proceedings on October 4, 2011; “T2.” will refer to the second transcript volume of trial proceedings on October 4, 2011; and “S.” will refer to the transcript of sentencing proceedings on December 2, 2011.
- 2 Unless otherwise noted all statutor references are to the Criminal Law article.
- 3 At trial, the State proffered that Mrs. Baker had passed away before trial and her “death... had absolutely nothing to do with this.” (T2. 25)

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